

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENTS WITH
FOREIGN POSTAL OPERATORS
CHINA POST GROUP – UNITED STATES POSTAL SERVICE
MULTI-PRODUCT BILATERAL AGREEMENT (MC2010-34)
NEGOTIATED SERVICE AGREEMENT

CP2013-23

**NOTICE OF UNITED STATES POSTAL SERVICE OF FILING
FUNCTIONALLY EQUIVALENT INBOUND COMPETITIVE MULTI-SERVICE
AGREEMENT WITH A FOREIGN POSTAL OPERATOR**
(November 30, 2012)

In accordance with 39 C.F.R. § 3015.5 and Order No. 546,¹ the United States Postal Service (Postal Service) hereby gives notice that the Postal Service has entered into an additional Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator. This notice concerns the inbound portion of a Multi-Product Bilateral Agreement with China Post Group (China Post 2013 Agreement) that the Postal Service seeks to include within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators (MC2010-34 and CP2010-95) product.

Prices and classifications for competitive products not of general applicability for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators were previously established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive

¹ PRC Order No. 546, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, Docket Nos. MC2010-34 and CP2010-95, September 29, 2010.

Multi-Service Agreements with Foreign Postal Operators, issued August 9, 2010 (Governors' Decision No. 10-3).²

The Postal Regulatory Commission (Commission) previously determined, in Order No. 546, that the agreement with Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV that is the subject of Docket No. CP2010-95 (TNT Agreement) should be included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34 and CP2010-95) product. In Order No. 546, the Commission acknowledged that the Postal Service proposed "that additional agreements functionally equivalent to the TNT Agreement be added to the competitive product list as price categories under the Competitive Multi-Service Agreements product."³ For other competitive products, the Commission has determined that additional individual contracts may be included as part of the product if they meet the requirements of 39 U.S.C. § 3633 and if they are functionally equivalent to the previously submitted contracts included within the product.⁴ Subsequently, the Commission added the China Post 2011 Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.⁵ The rates set forth in

² A redacted copy of the Governors' Decision No. 10-3 was filed on August 13, 2010, and is filed as Attachment 3 of this Notice. An unredacted copy of this Governors' Decision was filed under seal on the same day with Request of United States Postal Service to Add Inbound Competitive Multi-Service Agreements with Foreign Postal Operators to the Competitive Product List, and Notice of Filing (Under Seal) of Enabling Governors' Decision and Negotiated Service Agreement, Docket Nos. MC2010-34 and CP2010-95, August 13, 2010. That notice may be accessed at the following link: http://prc.gov/Docs/69/69690/MC2010-34_CP2010-95%20Request_Notice.pdf.

³ PRC Order No. 546, at 4.

⁴ See, e.g., PRC Order No. 601, Order Approving Five Additional Global Expedited Package Services 3 Negotiated Service Agreements, Docket Nos. CP2011-34, CP2011-35, CP2011-36, CP2011-37 and CP2011-38, December 1, 2010, at 5.

⁵ PRC Order No. 859, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-68, September 16, 2011.

the China Post 2011 Agreement are scheduled to expire on December 31, 2012.⁶ As such, the China Post 2013 Agreement is intended to become effective on January 1, 2013.

The China Post 2013 Agreement and supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission, and a redacted copy of the agreement is filed as Attachment 1. A certified statement concerning the China Post 2013 Agreement that is required by 39 C.F.R. § 3015.5(c)(2) is included with this filing as Attachment 2, and an Application for Non-Public Treatment is included as Attachment 4. A redacted version of the supporting financial documentation is included with this filing as a separate Excel file.

The Postal Service demonstrates in this filing that the agreement to deliver inbound Air CP, Surface CP, and EMS in the United States that is included in the China Post 2013 Agreement is functionally equivalent to the agreement to deliver inbound Air CP, Surface CP, and EMS in the TNT Agreement. Accordingly, the Postal Service requests that the Commission include the China Post 2013 Agreement within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34 and CP2010-95) product.

Identification of the Additional Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator

The Postal Service believes that the China Post 2013 Agreement fits within the Mail Classification Schedule (MCS) language included as Attachment A to Governors'

⁶ See United States Postal Service Response to Order No. 859 Concerning Effective Dates of An Inbound Competitive Multi-Service Agreement With Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-68, December 30, 2011.

Decision No. 10-3.⁷ The competitive services offered to China Post include rates for inbound Air CP, Surface CP, and EMS.⁸ The Postal Service and China Post Group intend for the effective date of the rates concerning Air CP, Surface CP and EMS included in the agreement that the Postal Service is filing with this notice to be January 1, 2013. The rates for inbound Air CP, Surface CP and EMS included in the agreement that the Postal Service is filing with this notice shall remain in effect for one year after the effective date of this agreement unless terminated sooner.

In this docket, the Postal Service is presenting only an agreement with China Post Group to deliver inbound Air CP, Surface CP, and EMS in the United States. The rates paid by the Postal Service to China Post Group for outbound delivery of the Postal Service's competitive products in China have not been presented to the Commission. Those rates represent supplier costs to the Postal Service, which are built into the prices that the Postal Service charges its shipping customers for outbound competitive products to be delivered in China. An agreement concerning outbound competitive services with China Post Group would no more need to be classified as a product or otherwise subjected to prior Commission review than would an agreement to purchase trucking services from highway contractors or to purchase air transportation from air carriers.

⁷ See also 2515.10 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, Additional Supplemental Comments of United States Postal Service on Mail Classification Schedule, PRC Docket No. RM2011-8, July 29, 2011, Suppl MCS Markup 7 28 2011. pdf, at 411.

⁸ The China Post 2013 Agreement also includes rates for a yet to be launched inbound product. See China Post 2013 Agreement at Annex 1, Note 3 for more information. The Agreement states that prior to launching the product, the Parties must enter into a written modification to the Agreement, subject to approval from various entities, including the Commission.

Application for Non-public Treatment

The Postal Service maintains that the redacted portions of the contract and related financial information should remain confidential. Attachment 4 to this Notice is the Postal Service's application for non-public treatment of materials filed under seal in this docket. A full discussion of the required elements of the application appears in Attachment 4.

Functional Equivalency of Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

The inbound portion of the China Post 2013 Agreement is substantially similar to the inbound portion of the TNT Agreement in terms of the products being offered under the contract and the contract's cost characteristics. Like the TNT Agreement, the China Post 2013 Agreement also fits within the parameters outlined by Governors' Decision No. 10-3, which establishes the rates for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators. There are, however, differences between the inbound portion of the China Post 2013 Agreement and the inbound portion of the TNT agreement. These differences include the following.⁹

- The China Post 2013 Agreement and the TNT Agreement are with different foreign postal operators. As a result, the name and address of the foreign postal operator with whom the agreement is made is different in the title, first paragraph, Article 16, signature block, and throughout the agreement.

⁹ The differences listed do not include differences that specifically apply to the sections of the China Post 2013 Agreement that concern inbound Letter Post items. These differences are listed in the companion filing which requests that the China Post 2013 Agreement be included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35, R2010-5 and R2010-6) product.

- Article 1, paragraph 3 of the China Post 2013 Agreement specifically mentions that the purpose of the agreement includes setting out the bilateral rates that will apply to the exchange of parcels and Express Mail Service (EMS) products.
- An additional article, Article 8, concerning Customs Inspection is included in the China Post 2013 Agreement. As a result, all subsequent articles and references to all subsequent articles are renumbered.
- Article 9, paragraph 1, concerning Termination, provides for a different number of days advance written notice concerning termination. Article 9 paragraph 3 sets forth in greater detail what happens to the rates for the services included in Annex 1 in the event of termination.
- Article 10, Dispute Resolution includes an additional paragraph of procedures.
- Article 12, Indemnification and Liability, includes an additional paragraph and some language has been rephrased.
- Article 14, Confidentiality Requirements, provides additional details concerning procedures related to the handling of confidential information and the Postal Service's obligations to file certain information with the Commission.
- In Article 16, Notices, the title and address of the Postal Service contact has been revised.
- Article 22, Entire Agreement, has been revised to clarify what constitutes the entire agreement.

- Article 23, Term, has been extensively revised. The first paragraph of Article 23 indicates that the Parties agree that January 1, 2013, is the intended Effective Date for the inbound Competitive settlement rates that are set forth in Annex 1 of the Agreement. The second paragraph of Article 23 sets forth the procedures to be followed to establish the Effective Date.
- An Article 24 concerning Intellectual Property, Co-Branding and Licensing has been added.
- An additional Article 25 concerning the survival of various provisions has been included.
- The individuals who signed the China Post 2013 Agreement on behalf of the Postal Service and China Post are different than those that signed the China Post 2011 Agreement.
- In Annex 1, the first paragraph explains the relationship between the rates provided and certain provisions of the agreement.
- The rate table in Annex 1 is different.
- In Annex 1, the notes after the rates table provide further details concerning the mail streams and rates described in the rates table.
- Annex 1 to the China Post 2013 Agreement also includes rates for a yet to be launched product, which is discussed, in part, in footnote 8 of this filing.
- In Annex 1, additional details have been provided about the specifications for Parcel Post and EMS product categories and formats.

- An Annex 4 has been added which concerns detailed item content restrictions.
- An Annex 5 has been added which includes Office of Exchange Routing details.
- An Annex 6 has been added which concerns business rules for settlement.

Because the China Post 2013 Agreement and the TNT Post Agreement incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same, for the China Post 2013 Agreement and the TNT Agreement. The Postal Service does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the agreements. Nothing detracts from the conclusion that these agreements are “functionally equivalent in all pertinent respects.”¹⁰

Conclusion

For the reasons discussed, and as demonstrated by the financial data filed under seal, the Postal Service has established that the China Post 2013 Agreement is in compliance with the requirements of 39 U.S.C. § 3633 and is functionally equivalent to the TNT Agreement, the first agreement to be included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (MC2010-34 and CP2010-95) product. Accordingly, the China Post 2013 Agreement should be added to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (MC2010-34 and CP2010-95) product.

¹⁰ PRC Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, Docket No. CP2008-8, June 27, 2008, at 8.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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Corporate and Postal Business Law Section

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November 30, 2012

CHINA POST GROUP – UNITED STATES POSTAL SERVICE MULTI-PRODUCT BILATERAL AGREEMENT

This Agreement ("Agreement") is between the United States Postal Service ("USPS"), an independent establishment of the Executive Branch of the Government of the United States with offices at 475 L'Enfant Plaza SW, Washington, DC 20260, and China Post Group ("China Post"), the postal operator in the People's Republic of China, organized and existing under the laws of the People's Republic of China, and having a place of business at No. 3A Financial Street, Xicheng District, 100808, Beijing, China. The USPS and China Post may be referred to individually as a "Party" and together as the "Parties."

INTRODUCTION

WHEREAS, the Parties desire to enter into a non-exclusive relationship whereby the Parties will provide each other certain products and/or services pursuant to the terms and conditions contained herein;

WHEREAS, the Parties acknowledge and understand that the commencement of performance under this Agreement is subject to the approval of and/or non-objection by various entities with oversight responsibilities, which may include but not be limited to the USPS management's executive committee, the USPS Governors, and/or the U.S. Postal Regulatory Commission. Accordingly, China Post acknowledges and understands that the ability of the USPS to perform under this Agreement may not occur, and in this respect the provisions of Articles 3 and 4 shall apply;

WHEREAS, in light of the aforementioned acknowledgements, the Parties desire to be bound by the terms of this Agreement as well as the terms of Article 4 of this Agreement entitled "Conditions Precedent";

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties hereby agree as follows:

Article 1: Purpose of the Agreement

The purposes of this Agreement are the following:

1. to foster the maintenance and further development of a mutually beneficial relationship on behalf of the Parties' respective customers;
2. to set out the principles and general terms and conditions that shall apply to the exchange of certain international products and services between the Parties; and
3. to set out the bilateral rates that will apply to the exchange of certain letter class, parcels, and Express Mail Service (EMS) products as specified in Annex 1.

Article 2: Guiding Principles of the Agreement

1. The Parties agree to work together to improve the quality of postal services between China Post and the United States Postal Service in order to better serve the market. In particular, the Parties agree to provide access to each other's operating networks and services in such a way that for each service provided:
 - (i) excellence in quality of service performance will be attained and maintained;
 - (ii) the flexibility required to meet changing market and logistical conditions will be supported;
 - (iii) the costs to each Party of providing services will be minimized; and

- (iv) the settlement and payment processes will continue to be streamlined, with the objective being to make such processes efficient, timely, and specific to each particular service or type of service.
2. In addition to the level of cooperation specifically outlined in this Agreement, the Parties intend to collaborate further on product development, enhancements to current products, and specified value-added services required to meet the ever-evolving needs of their customers.

Article 3: Oversight and Effective Date

The terms and pricing set forth under this Agreement require the approval from various entities that have oversight responsibilities for the USPS as set out in Article 4 below. Upon execution of this Agreement, the USPS shall seek such approval. This Agreement shall come into effect upon all such approvals having been obtained by USPS and notification to China Post by the USPS that all required approvals have been obtained, and the date of notification shall be "the Effective Date," unless an alternative date is proposed in the USPS's notification and agreed to by China Post in a return communication, in which case that alternative date shall be the Effective Date.

Article 4: Conditions Precedent

The Parties acknowledge and understand that all obligations of the USPS under this Agreement shall be contingent on the USPS receiving approvals from, and/or non-objection by (hereinafter "Conditions Precedent") one or more internal and external bodies that have oversight responsibilities. Conditions Precedent may include but are not limited to: approvals or, if applicable, non-objection, from USPS management's executive committee, the Governors of the USPS, and the U.S. Postal Regulatory Commission. The Parties acknowledge that the Agreement might not be approved by such bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to provide the products or services contemplated under the Agreement, no obligation shall exist for the USPS or China Post and no benefit or rights granted through this Agreement shall inure to either Party unless and until the Effective Date occurs and upon such occurrence the Conditions Precedent shall have been fulfilled.

Article 5: Limitation on Liability and Costs

In the event that the Conditions Precedent are not fulfilled, the USPS and China Post shall have no liability, which shall include no obligation to pay costs associated with any action taken by China Post prior to the Effective Date of the Agreement. Further, in the event of termination of the Agreement or the failure of any Condition Precedent, neither Party shall be held liable for any damages including, without limitation, the following: actual damages; special damages; indirect damages; incidental damages; punitive damages; consequential damages; or any other damages, which shall include but not be limited to damages for loss of business profits; business interruption; any other loss; and/or any cost incurred by either Party attributable to such non-approval such as attorney's fees.

Article 6: Price Changes; No Effect on Service Terms

For each of the services with specific terms and conditions set forth in an attachment to this Agreement, any adjustments to the rates for the services shall be subject to the terms and conditions set forth in the Annexes of this Agreement.

Article 7: Monetary Transactions

1. Each Party will bear the costs and retain the revenues for any work performed by itself and by agents or contractors on its behalf, unless the Parties agree to other arrangements to allocate costs or revenues and those arrangements are incorporated in an Amendment to this Agreement. Any such Amendment shall be governed by Article 19 below.

2. All taxes and duties are the sole responsibility of the Party to whom they are duly assessed and shall not be charged to any other Party in any form unless the Parties otherwise provide in an Amendment to this Agreement. Any such Amendment shall be governed by Article 19 below.

Article 8: Customs Inspection

USPS bears no responsibility for the disposition of items in the custody of U.S. Customs & Border Protection. Further, China Post understands that all contents of any item, including items that are treated as sealed mail under USPS regulations, are subject to inbound search and inspection by U.S. Customs & Border Protection, regardless of when the USPS elects to conduct verification and acceptance of any inbound items.

Article 9: Termination

1. Either Party may terminate this Agreement without cause upon 30 days advance written notice to be served on the other Party, with such termination effective as of the end of the calendar month in which the 30-day notice period expires. The right to terminate the Agreement for good cause remains unaffected.
2. In the event of termination of the Agreement under this Article, the Parties shall be liable to make final settlement of all amounts owing as of the effective date of the termination. Each Party shall bear its own costs in the event of termination. All further rights and remedies shall remain unaffected.
3. In the event of termination, and as of the effective date of termination, the Parties shall revert to the default letter post and parcel post rates applicable under the Universal Postal Union Convention, and to the EMS charges normally applied in light of the Parties' respective commitments to one another (e.g., as EMS Cooperative members, KPG members, or otherwise), effective at the time of such termination, and neither Party shall be liable to the other for any damages including, without limitation, actual, special, indirect, incidental, punitive, consequential or any other damages (including, without limitation, damages for loss of business profits, business interruption or any other loss) for any reason incurred as a result to the change of rates after termination.

Article 10: Dispute Resolution

1. The Parties intend to resolve all controversies under this Agreement informally through correspondence, oral communications, and informal meetings.
2. If the method described in the above paragraph proves insufficient to resolve a controversy, the Parties agree that the signatories to this agreement, or their replacement, shall provide a written description of the controversy to the other Party and a suggested outcome. They will review the information provided and shall attempt in good faith to come to an agreement on the issue through correspondence, oral communications, or informal meetings.
3. If the methods described in the above paragraph prove insufficient to resolve a controversy, the Parties agree to refer that controversy to mediation, which shall consist of an informal, nonbinding conference or conferences between the Parties and the mediator, which shall perform mediation responsibilities in the English language. The mediator will be selected as mutually agreed by the Parties.
4. With the exception of controversies concerning cost or revenue liability, mediation will provide the sole means for addressing controversies related to this Agreement. If mediation does not resolve such a controversy, the parties may exercise their right to terminate.
5. For controversies related to cost or revenue liability, China Post and the USPS will first refer the matter to mediation as discussed in the above paragraph. If mediation does not

resolve such a controversy, an action relating to cost or revenue liability may be instituted and maintained only in the United States District Court for the District of Columbia. The parties each irrevocably submit to the exclusive personal jurisdiction of the United States District Court for the District of Columbia and waive any objection to the laying of venue in that court, to the convenience of that forum, and to that court's personal jurisdiction over the Parties.

6. Notwithstanding the provisions of this Article 10, and without prejudice to Article 12, paragraph 1, in the event of conflict or inconsistency between the provisions of this Article 10 and Article 12, paragraph 1, the provisions of Article 12, paragraph 1 shall prevail.

Article 11: Construction

Except as otherwise provided in this Agreement, this Agreement shall be governed by and construed in accordance with U.S. Federal law.

Article 12: Indemnification and Liability

1. The Parties acknowledge that aspects of liability or indemnification (including, but not limited to air parcels, and the bilaterally negotiated air parcel product dispatched by China EMS Logistic Company via its network) not expressly governed by this Agreement or its regulations are subject to the appropriate provisions of the Acts of the Universal Postal Union and any reservations the Parties have taken to those instruments.
2. In the event that an entity not party to this Agreement asserts claims against China Post or USPS that are attributable to the actions of the other Party to this Agreement and are not subject to the provisions of the Acts of the Universal Postal Union, the latter Party shall indemnify the defending Party for, and hold the defending Party harmless from, any losses, damages or liabilities suffered by the defending Party as a result. In that instance, the indemnifying Party shall also reimburse the defending Party for all reasonable expenses incurred in connection with investigating, preparing for, or defending any such claim, whether in an administrative, regulatory or judicial proceeding, and whether or not the indemnified Party is named in the proceeding.
3. Neither Party to this Agreement shall be liable to the other Party, or will indemnify the other Party, for any loss or damages including, without limitation, actual, special, indirect, incidental, punitive, consequential or any other damages (including, without limitation, damages for loss of business profits, business interruption or any other loss) for any reason, except for the following:
 - a. liability and indemnification as described in Article 12, paragraphs 1 and 2,
 - b. final settlement under Article 9, or
 - c. any actual damage or loss suffered by a Party as a result of a breach of this Agreement by the other Party.
4. Nothing in this Agreement shall be construed as an acknowledgment or concession regarding the validity of any claim or the entitlement of any Party to any amount of damages.

Article 13: Language

The official version of this Agreement, including all supporting documentation and correspondence, shall be in English. The English language shall be the controlling language for the purpose of interpreting this Agreement, and all correspondence between the Parties pertaining to this Agreement shall be in the English language. In the event of inconsistency between any terms of this Agreement, including its supporting documentation and correspondence, and any translation into another language, the English language meaning shall control.

Article 14: Confidentiality Requirements

1. The Parties consider the rate information included in this Agreement to be commercially sensitive information and agree that it should not be disclosed to third parties except as required by law. China Post will treat as confidential and not disclose to third parties, absent express written consent by the USPS, any information related to this Agreement that is treated as non-public by the U.S. Postal Regulatory Commission.
2. China Post acknowledges that as part of securing approval of this Agreement and in other subsequent regulatory filings, the Agreement and supporting documentation will be filed with the U.S. Postal Regulatory Commission ("Commission") in a docketed proceeding." China Post authorizes the USPS to determine the scope of information that must be made publicly available under the Commission's rules. China Post further understands that any unredacted portion of this Agreement or supporting documentation may be posted on the Commission's public website, www.prc.gov. In addition, the USPS may be required to file information in connection with this Agreement (including revenue, cost, or volume data) in other Commission dockets, including Commission docket numbers ACR2013 and ACR2014. China Post has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22, on the Commission's website: www.prc.gov/Docs/63/63467/Order225.pdf. At China Post's request, the U.S. Postal Service will notify China Post of the docket number of the Commission proceeding to establish the rates in this instrument under U.S. law, once that docket number has been assigned.

Article 15: Severability

If any of the provisions of this Agreement shall be held void or unenforceable, the other provisions shall survive and remain in full force and effect, subject only to either Party's unilateral right to terminate the Agreement.

Article 16: Notices

Any notice or other document to be given under this Agreement will be in writing and addressed as set out below. Notices may be delivered by hand, email, or Express Mail.

To the USPS:

Shea Felix
Director, Global Business Solutions
United States Postal Service
475 L'Enfant Plaza SW, Room 2P800
Washington, DC 20260
United States of America
shea.r.felix@usps.gov

To China Post:

Wang Xiuying (Sylvia)
Project Manager
Department of International Cooperation
China Post Group
No 3A Financial Street, Xicheng District
Beijing 100808
China
wangxiuying@postoa.com.cn

Article 17: Force Majeure

Neither party shall be liable for its failure to perform under the terms of this Agreement due to any contingency beyond its reasonable control, including acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, governmental laws, ordinances, rules and regulations, whether valid or invalid, court orders, whether valid or invalid, inability to obtain material, equipment, or transportation, and any other similar or different contingency.

Article 18: Legal Status of this Agreement

This Agreement constitutes a legally binding agreement on the part of each signatory hereto and does not bind the Parties' respective governments. The Parties acknowledge that this Agreement sets out the terms and conditions of a negotiated contractual arrangement between the Parties and is not an agreement entered into or subject to international law. This Agreement does not involve the creation of a wholly-owned subsidiary of any Party or a joint venture company or partnership funded in any ratio by the Parties. The Parties do not intend that any agency or partnership relationship be created between any of them by this Agreement.

Article 19: Amendment

This Agreement may be amended or extended only by mutual written agreement signed by authorized representatives of China Post and USPS. Neither a Party's acquiescence in any performance at variance to this Agreement nor a Party's failure to exercise any right or enforce any obligation shall be deemed an amendment to this Agreement. The Amendment may be contingent upon any and all necessary approvals by USPS management, the USPS Governors, the USPS Board of Governors, and/or the U.S. Postal Regulatory Commission. If such approvals are required, the Amendment will not become effective until such time as all necessary approvals are obtained.

Article 20: Assignment

This Agreement may not be assigned in whole or in part by any Party without the prior written consent of the other parties. Each Party may, however, delegate certain of its responsibilities under this Agreement to a subsidiary or other affiliate entity within its organizational structure without the need for consent by the other Parties so long as such subsidiary or entity would be bound by this Agreement.

Article 21: Applicability of Other Laws

1. The Parties acknowledge that this Agreement does not involve the USPS's acquisition of property or services and is not subject to the Contract Disputes Act (41 U.S.C. §§ 601 et seq.).
2. The Parties recognize that performance under this Agreement may be subject to laws enacted or enforced by governmental entities and is contingent on each Party obtaining all consents, authorizations, orders, or approvals required under applicable law or policy to effectuate the Agreement.
3. The Parties understand that USPS may be required to provide copies of this Agreement to the U.S. Department of State and the U.S. Postal Regulatory Commission. China Post acknowledges that the entire Agreement, or portions thereof as the USPS determines to be appropriate, will be filed with the U.S. Postal Regulatory Commission with a notice to add it to the competitive and/or market dominant products list.

Article 22: Entire Agreement

1. Except as otherwise provided in this Agreement, this Agreement, including all Annexes to this Agreement, shall constitute the entire agreement between the Parties concerning the exchange of international mail described herein.

2. The Parties acknowledge that the provisions of the Universal Postal Convention and applicable regulations apply except to the extent inconsistent with this Agreement.
3. The Parties confirm their adherence to all other terms and conditions relating to the exchange of EMS items set forth in their previous agreements concerning the exchange of EMS items as well as to the service guarantees, targets and levels of achievement adopted by the members of the Kahala Post Group, which are expressly incorporated into this Agreement by reference.
4. Neither China Post nor the USPS is released from any obligations arising under the China Post Group – United States Postal Service Letter Post Bilateral Agreement executed by China Post Group on June 11, 2010 and by the USPS on June 25, 2010 ("CPG – USPS 2010 Letter Post Bilateral Agreement"), which expired on September 30, 2011.
5. Neither China Post nor the USPS is released from any obligations arising under the China Post Group – United States Postal Service Contractual Bilateral Agreement executed by China Post Group on November 16, 2009 and by the USPS on November 16, 2009 ("CPG – USPS 2009 Contractual Bilateral Agreement").
6. Neither China Post nor the USPS is released from any obligations arising under the China Post Group – United States Postal Service Multi-Product Bilateral Agreement executed by China Post Group and by the USPS on August 15, 2011. ("CPG – USPS 2011 Multi-Product Bilateral Agreement") The Parties agree that upon the expiration of the CPG- USPS 2011 Multi-Product Bilateral Agreement, the rates for the letter post products in the CPG-USPS 2011 Multi-Product Bilateral Agreement shall revert to the default letter post rates applicable under the Universal Postal Union Convention, except to the extent that such rates are included in this Agreement, if this Agreement has become effective.
7. With the exception of the Agreements mentioned in Paragraphs 3, 4, 5 and 6 of this Article, or as otherwise indicated in this Agreement, any prior agreement, understanding, or representation of any kind pertaining to the subject matter of this agreement and preceding the date of this Agreement shall not be binding upon either Party.

Article 23: Term

1. The Parties intend that the Effective Date of the settlement rates for the products set forth in Annex 1 of this Agreement shall be January 1, 2013.
2. The USPS will notify China Post of the Effective Date of the Agreement after receiving the approval of the entities that have oversight responsibilities for the USPS. USPS shall have no obligation to notify China Post of the status of the approval process or of potential fulfillment of the approval process. The Agreement shall remain in effect for one year after the Effective Date unless terminated sooner pursuant to Article 9 of this Agreement. Before the expiration of this period, the Agreement shall be reviewed by both Parties to determine whether to extend or modify this Agreement.

Article 24: Intellectual Property, Co-Branding, and Licensing

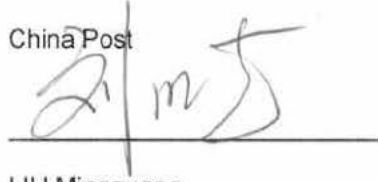
The Parties acknowledge that in the service of improving existing international products or developing new international products under this Agreement that such products may be enhanced through the use of co-branding or the use of each Party's trademarks, logos or intellectual property. In such instances, the Parties acknowledge and agree that any use shall be subject to separate written agreements. The Parties acknowledge and agree that neither Party shall use the other Party's trademarks, logos or intellectual property until such time that a license for each specific such use has been executed by the Parties and all laws and regulations required for such license's effectiveness have been perfected, which shall include but not be limited to any recordation requirements.

Article 25: Survival

The provisions of Articles 5, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, and 24 shall survive the conclusion or termination of this agreement, as well as any other terms insofar as they apply to the Parties' continuing obligations to one another under the articles listed above.

IN WITNESS WHEREOF, the Parties agree to be bound as of the latest date of signature to the terms and conditions of this Agreement.

China Post



LIU Mingguang
Vice President

United States Postal Service



Giselle Valera
Managing Director, Global Business, and Vice
President

2012.11.8
Date

November 8, 2012
Date

Annex 1: Settlement Rates

Rates

The rates below shall be in effect for the term of this Agreement, as set forth in Article 23. Changes in rates during the term of this Agreement will be negotiated and agreed to in accordance with Article 19.

Settlement rates listed in the tables included below are product stream rates per piece and per kilogram stated in Special Drawing Rights (SDRs) unless noted otherwise. The rates are set on the conditions that current work-sharing arrangements are substantially maintained. Any changes to current work-sharing (i.e., sortation and preparation) arrangements will be subject to negotiations and mutual written agreement, including, but not limited to, agreement as to any impact on pricing.

Additionally, each Party is encouraged, but not required, to consider offering to the other Party incentives for optional activities, such as sortation or separation changes.

Rates /1			
China to USA			
Mail Stream /2	Service Description	Proposed Settlement Charges (SDR/piece)	Proposed Settlement Charges (SDR/Kg)
A, UD, BG	SMALL PACKET WITH DELIVERY SCANNING		
A, UD, BG	SMALL PACKET WITH DELIVERY SCANNING		
A, CN, BG	AIR PARCELS - ORDINARY		
A, CV, BG	AIR PARCELS - INSURED		
B, CN, BG	SAL PARCELS - ORDINARY		
B, CV, BG	SAL PARCELS - INSURED		
C, CN, BG	SURFACE PARCELS - ORDINARY		
C, CV, BG	SURFACE PARCELS - INSURED		
A, ED, BG	EMS - DOCUMENTS		
A, EM, BG	EMS - MERCHANDISE		
A, CZ, TBD			
USA to China			
Stream /2	Service Description	Proposed Settlement Charges (SDR/piece)	Proposed Settlement Charges (SDR/kg)
A, UD, BG	SMALL PACKET WITH DELIVERY SCANNING		
A, CN, BG	AIR PARCELS - ORDINARY		
A, ED, BG	EMS - DOCUMENTS		
A, EM, BG	EMS - MERCHANDISE		

Specifications of Letter Post Product Categories and Formats

The rates for the mail stream categories above shall be based upon the following format and product definitions:

Small Packets with Delivery Scanning – China to USA
Refer to Annexes 2 and 3 of this Agreement

Specifications of Parcel Post Product Categories and Formats

Air Parcels and Surface Parcels

The admitted maximum weight limit for Air Parcels and Surface Parcels is 31.5kg (70 lbs)

The admitted maximum size for Air Surface Parcels is 1.05m x 1.05m x 1.05m or 2m length & greatest circumference (42 inches x 42 inches x 42 inches or 79 inches length & greatest circumference

Specifications of EMS Product Categories and Formats

The parties to this agreement also confirm their adherence to all other terms and conditions relating to the exchange of EMS items set forth in their previous agreements concerning the exchange of EMS items as well as to the service guarantees, targets and levels of achievement adopted by the members of the Kahala Post Group, which are expressly incorporated into this Agreement by reference.

Processing of EMS Items Exceeding Maximum Weight and Size Limitations

USPS shall return to China Post all EMS items exceeding size and weight limitations, as specified in the below table. USPS shall also return to China Post all parcel items that exceed the size and weight limitations as specified in the above section on Parcel Post. USPS shall charge China Post any applicable handling fees and return transportation charges for such returned EMS or parcel items, as assessed by USPS. Such fees and charges shall be paid by China Post as part of the settlement process.

Mail Type	Maximum Weight	Maximum Volume
EMS	70 lbs (31.5 kg)	108 inches (2.74 m) combined length and girth and 60 inches (1.52 m) for any one dimension*

*Length is the longest side of the parcel, and girth is the measurement around the thickest part that is perpendicular to the length.

Annex 2 – Small Packets with Delivery Scanning (also known as “ePacket™”)

Package Specific Preparation Requirements

1. **Package Dimensions and Weight.** Each package shipped under this agreement must conform to the size and weight limitations specified in the UPU Letter Post Manual or as bilaterally agreed. Specifically, each package shall not exceed 2 kilograms in weight or limits of size specified in UPU Article RL 122.
2. **Package Contents.** Packages shall conform to the importation restrictions of the United States as set forth in the *Mailing Standards of the United States Postal Service*, International Mail Manual, section 710 (“Treatment of Inbound Mail”), which can be accessed online at http://pe.usps.com/text/imm/immc7_001.htm; and in accordance with the United States country listing in the Universal Postal Union’s List of Prohibited Items, which can be accessed at the Universal Postal Union website at <http://www.upu.int/en/activities/customs/list-of-prohibited-articles.html>. Packages should also conform to USPS’s regulations on Mailable Dangerous Goods as set forth in IMM section 135, which can be accessed online at http://pe.usps.com/text/imm/immc1_013.htm. USPS shall not be responsible for the contents or customs status of any packages imported under this Agreement. For packages seized or disposed of by U.S. Customs and Border Protection and not released, the sending post will not be charged postage for those packages. For packages detained but eventually released, applicable postage will apply. The sending post agrees to communicate these requirements to shippers as a condition of shipment.
3. **Package Labeling.** The bilaterally agreed upon, co-designed label will be displayed on the outside of each small packet with delivery scanning. In addition, each item will display a completed and accurate customs declaration. The barcode shall utilize the LK and LN prefixes of the UPU S10 barcode construct. The sample label is presented in Annex 3.

Receptacle Preparation Requirements

1. **Separation from other products.** The Small Packet with Delivery Scanning product that is described in this Agreement will be sorted in receptacles separate from other mail pieces. Other international products, including, but not limited to, other Letter Post products (such as Registered Mail), Express Mail Service (EMS), Air Parcels (Air CP), and direct entry packages, may not be commingled in receptacles containing Small Packet with Delivery Scanning items.
2. **Receptacle Identification.** Each receptacle will contain a 29-character UPU barcode containing the bilaterally agreed-upon mail subclass code of “UD.”
3. **Receptacle Routing.** To expedite the processing and delivery of these packages, the sending post may present receptacles to corresponding Offices of Exchange (OEs) per the routings outlined in Annex 5.

Dispatch Preparation Requirements

1. **Separation from other products.** The Small Packet with Delivery Scanning product that is described in this Agreement will be dispatched separately from other mail pieces. Other international products, including but, not limited to, other Letter Post products, Express Mail Service (EMS), Air Parcels (Air CP), and direct entry packages, may not be commingled in dispatches containing Small Packet with Delivery Scanning items.
2. **Dispatch Identification.** Each dispatch will contain the bilaterally agreed-upon mail subclass code of “UD” and unique dispatch numbers, which shall not repeat within any settlement period.

3. **Dispatch Manifesting.** Each dispatch will be manifested using the existing PREDES messages, whereby the number of receptacles and the total weight and number of pieces contained in each receptacle will be transmitted as accurately and timely as possible.

Financial Requirements

USPS and China Post shall settle Small Packet with Delivery Scanning volumes, and other Letter Post volumes in accordance with current Letter Post settlement procedures. However, Small Packet with Delivery Scanning volumes will be identified and segregated from other Letter Post volume through the assignment of the "UD" mail subclass. At the end of the settlement period, the corresponding rate, as determined in this agreement, shall be applied to the corresponding Letter Post volume, as identified by the mail subclass. China Post agrees to generate unique dispatch numbers throughout the course of the settlement period.

Return Service, Customer Inquiries and Compensation

1. **Return Service.** Return service for undeliverable, refused, or missent packages will be provided consistent with the current procedures for letter-post small packets.
2. **Customer Inquiries.** USPS will not accommodate customer inquiries made by customers in either China or the United States through retail units, customer service hotlines, or other channels for Small Packets with Delivery Scanning.
3. **Compensation.** USPS does not offer indemnity or insurance for Small Packages with Delivery Scanning. Accordingly, unless the Parties agree otherwise in a separate written agreement, USPS shall have no such liability.

Service Standards

Small Packets with Delivery Scanning under this Agreement carry no day-certain or time-specific guarantee. Applicable domestic service standards apply once the packages are cleared through U.S. Customs & Border Protection and entered into the U.S. domestic mailstream.

Annex 3 Co-Designed Label Samples

Below is a sample label for Small Packets with Delivery Scanning.

F	XXXXXX	Air Mail Postage Paid XXXX Post
		
From: FOREIGN SENDER STREET ADDRESS CITY COUNTRY POSTAL CODE		
<small>Customs information available on attached CN22. USPS Personnel Scan barcode below for delivery event information</small>		ZIP 12345
TO:	US RECIPIENT NAME STREET ADDRESS SUITE/ APT NUMBER WASHINGTON DC 12345-1234 UNITED STATES OF AMERICA	
USPS DELIVERY CONFIRMATION®		
		
XXXXXXXXXXXXXX		

ANNEX 4 – Detailed Item Content Restrictions

All items mailed under this Agreement must conform to the mailability requirements of the United States Postal Service, as detailed in the International Mail Manual sections 135 and 710; the United States country listing in the Universal Postal Union's List of Prohibited Items; and Domestic Mail Manual section 601. As of the execution date of this Agreement, these materials are available at the following websites, respectively:

http://pe.usps.gov/text/imm/immc1_013.htm

http://pe.usps.com/text/imm/immc7_001.htm

<http://www.upu.int/en/activities/customs/list-of-prohibited-articles.html>

<http://pe.usps.gov/text/dmm300/601.htm>

ANNEX 5 – Office of Exchange Routing Details

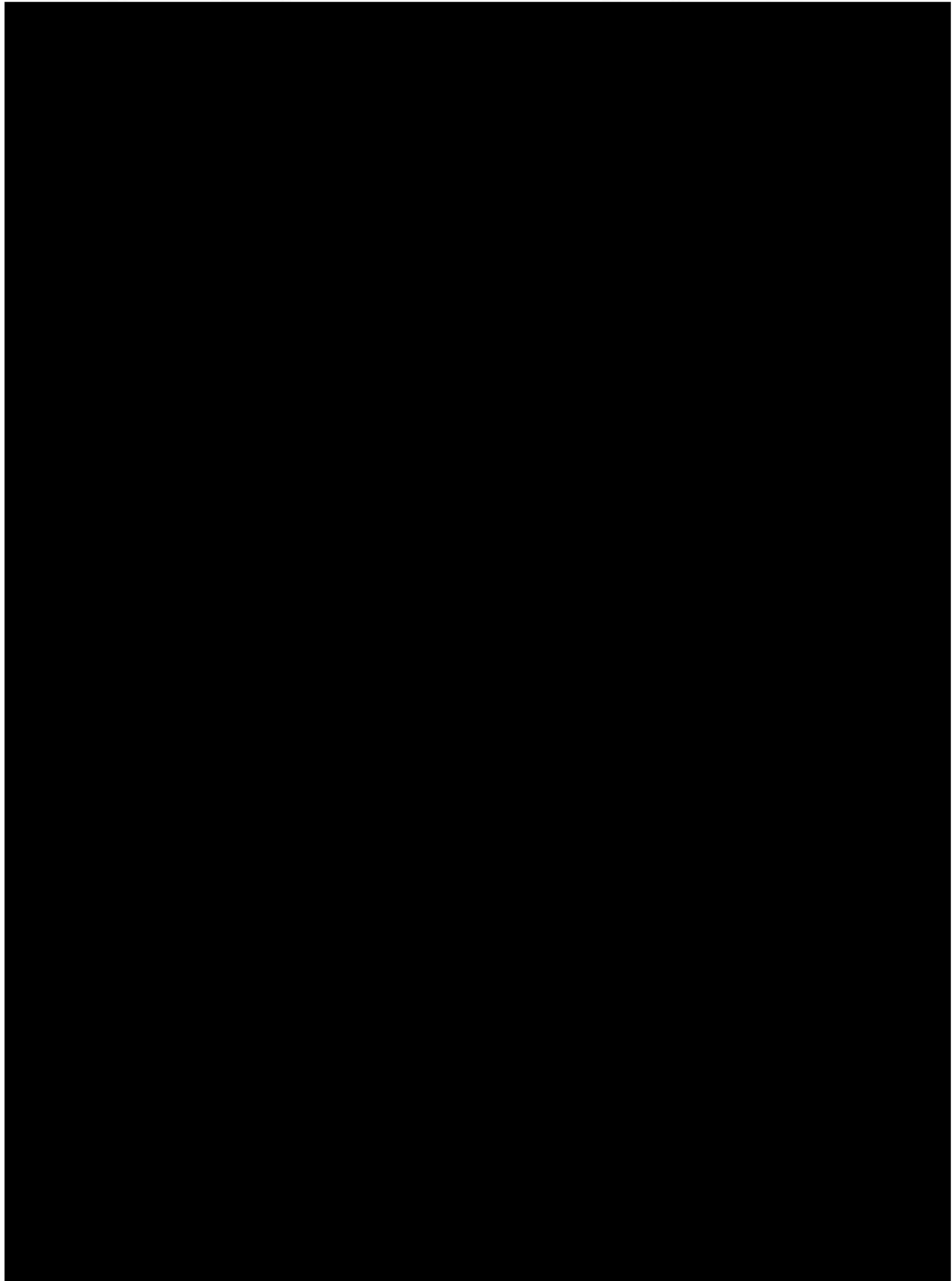
The inbound parcels and EMS prices charged by the USPS are based on China Post presorting its dispatches of parcels and EMS items to the United States as represented in the below table. China Post shall dispatch directly to Hawaii and Guam when possible.

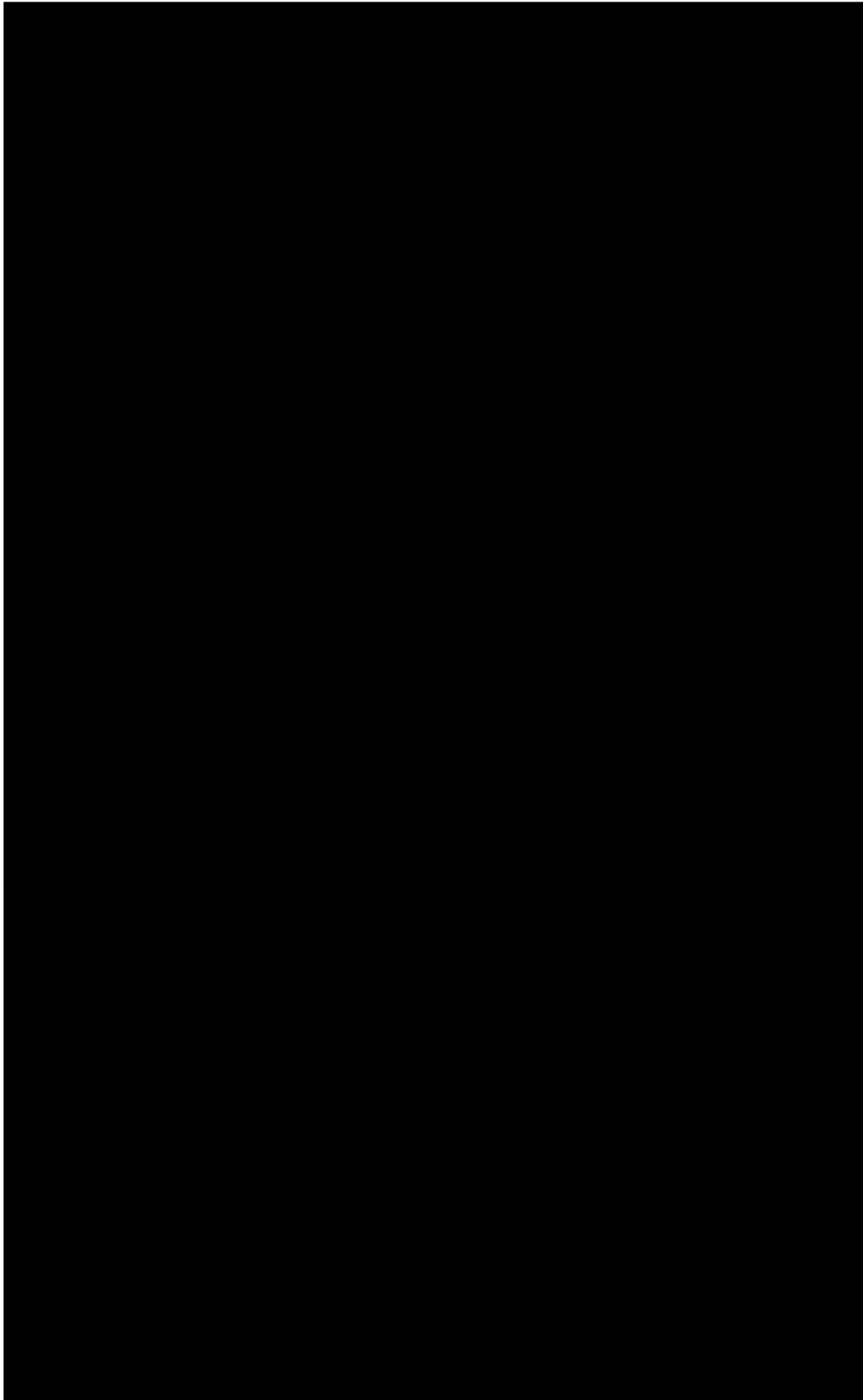
For all other classes of mail, the following table illustrates the appropriate U.S. point of entry based on the first digit of the destination address postal code. A more detailed table based on the first three digits can be provided upon request.

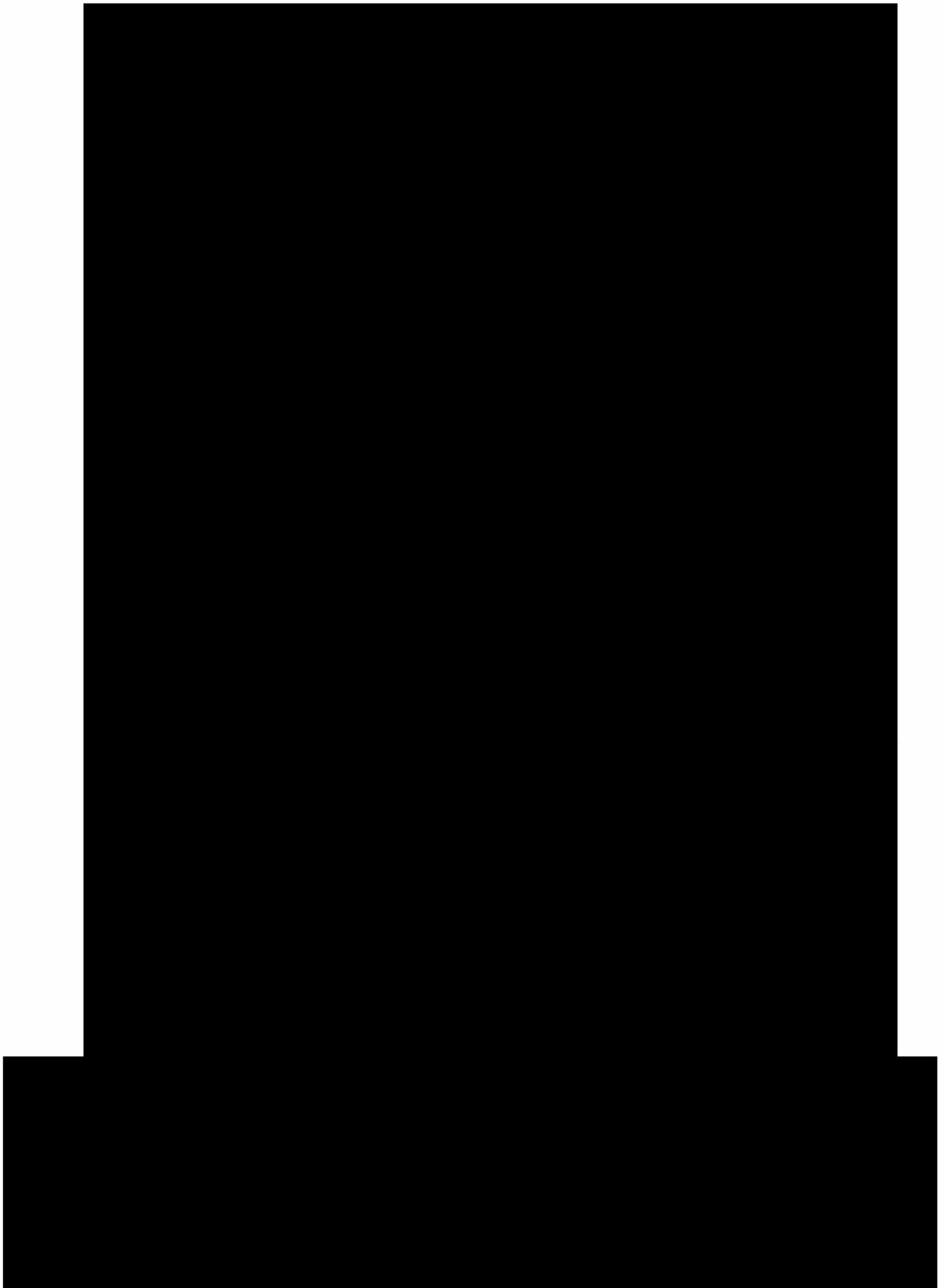
First Digit of Postal Code	Desired U.S. Point of Entry
0	JFK - New York
1	JFK - New York
2	JFK - New York
3	JFK - New York
4	ORD - Chicago
5	ORD - Chicago
6	ORD - Chicago
7	SFO – San Francisco
8	SFO – San Francisco OR LAX – Los Angeles
9	SFO – San Francisco OR LAX – Los Angeles

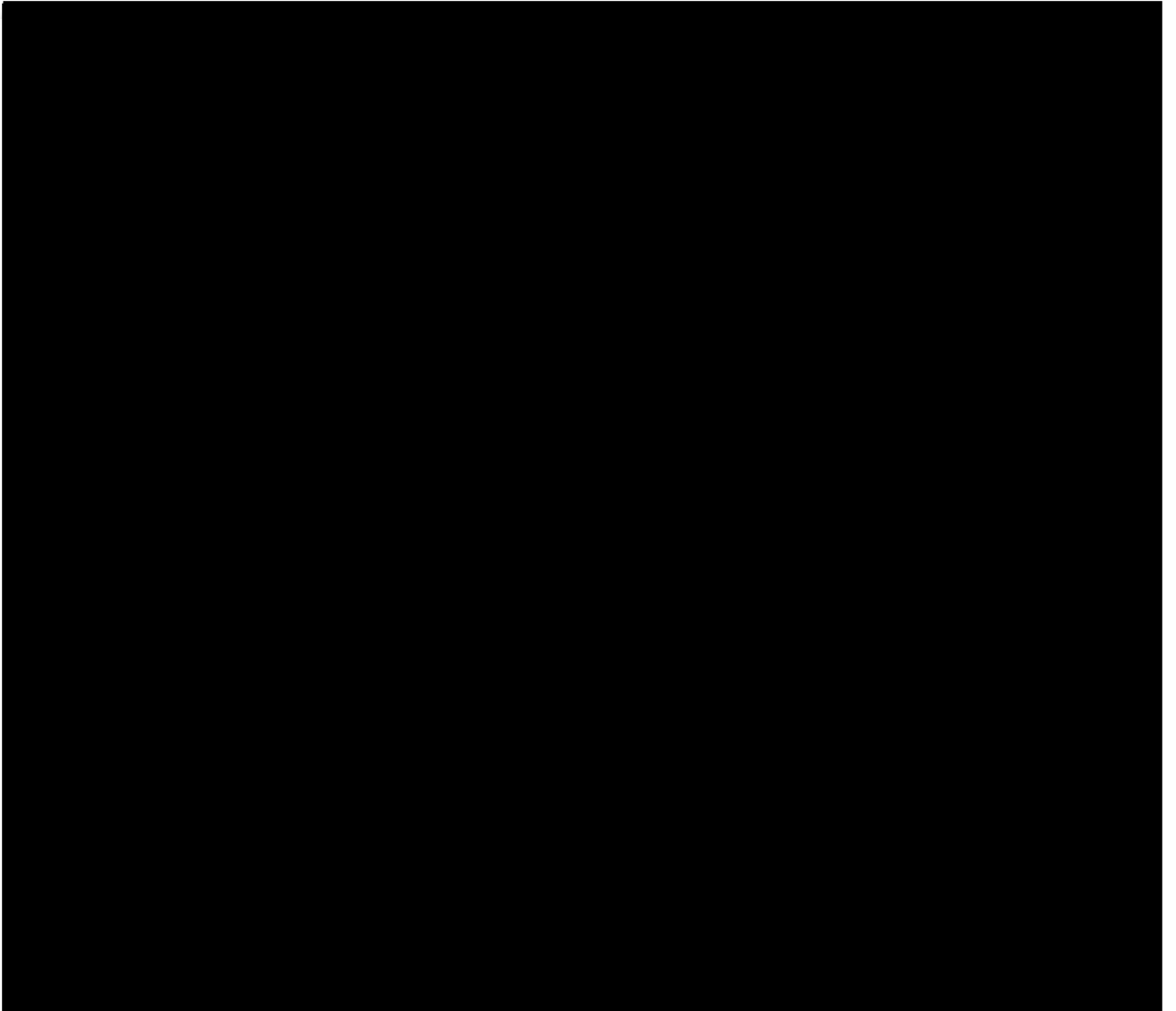
ANNEX 6 – Business Rules for International Mail Settlement of Products Listed in Article 23 of this Agreement as Having an Intended Effective Date of January 1, 2013

For certain EMS and Parcel flows from China to the United States, this Agreement establishes new bilateral rates for EMS and Parcel. Below is a summary description of the business rules that will be used by the USPS to implement the terms shown in this Agreement for the products listed in Article 23 of this Agreement as having an intended Effective Date of January 1, 2013.









**Certification of Prices for the Inbound Competitive Multi-Service Agreement with
China Post Group**

I, Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the prices for the Inbound Competitive Multi-Service Agreement with China Post Group. The prices contained in this agreement were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, issued August 6, 2010 (Governors' Decision No. 10-3)

I hereby certify that the cost coverage for the agreement with China Post Group has been appropriately determined and represents the best available information. The prices are in compliance with 39 U.S.C. § 3633(a)(1), (2), and (3). The prices demonstrate that the agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2011, all international competitive mail accounted for a relatively small percentage of the total contribution by all competitive products. Contribution from this agreement should be much smaller. The agreement with China Post Group should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.



Joseph Moeller

"RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE"

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE
ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR INBOUND COMPETITIVE
MULTI-SERVICE AGREEMENTS WITH FOREIGN POSTAL OPERATORS
(GOVERNORS' DECISION No. 10-3)**

August 6, 2010

STATEMENT OF EXPLANATION AND JUSTIFICATION

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices. This decision establishes prices by setting price floor and price ceiling formulas for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators. The agreements to which these prices will apply are described in Attachment A.¹ The pricing formulas and management's analysis of the appropriateness of these formulas are specified in Attachment B. We have reviewed that analysis and have concluded that the prices and classification changes are in accordance with 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. Agreements that fall within the terms specified in Attachment A, and whose prices fall within the price ranges established by the price floor and price ceiling formulas specified in Attachment B, are hereby authorized.

The PAEA provides that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. We are satisfied that the prices established according to the formulas listed in Attachment B will enhance the Postal Service's ability to meet the applicable statutory and regulatory requirements. We accept and rely upon the certification in Attachment C that the correct cost inputs for the formulas have been identified. In addition, the price floor formulas should produce prices that allow each product to cover attributable costs and

¹ Because the Postal Service is creating a new grouping for Inbound Competitive Multi-Service Agreements with Foreign Postal Administrations, entirely new Mail Classification Schedule language is proposed.

"RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE"

Governors' Decision No. 10-3

Page 2


provide a contribution toward the Postal Service's institutional costs. The prices should thus prevent cross-subsidies from market dominant products. As noted in the certification in Attachment C, entry into agreements pursuant to this Decision should not impair the ability of competitive products as a whole to cover an appropriate share of institutional costs.

No agreement authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 U.S.C. § 3632(b)(3).

ORDER

In accordance with the foregoing Decision of the Governors, the formulas set forth herein, which establish prices for the applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement is authorized under this Decision only if the prices fall within this Decision and the certification process specified herein is followed. Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of review by the Postal Regulatory Commission.

By The Governors:

A handwritten signature in black ink, appearing to read "Lou Giuliano", is written over a horizontal line.

Louis J. Giuliano
Chairman

Attachment A

Description of Applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

2614 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

2614.1 Description

- a. Inbound Competitive Multi-Service Agreements with Foreign Postal Operators provide prices for acceptance, transportation within the United States, and delivery of any combination of Inbound Air Parcel Post, Inbound Surface Parcel Post, Inbound Direct Entry, and/or Inbound International Expedited Services (Express Mail Service) tendered by foreign postal operators. These constituent services may include other services that the relevant foreign postal operator offers to its customers under differing terms, but that nevertheless are processed and delivered in a similar manner within the United States Postal Service's network. Such agreements may also establish negotiated rates for services ancillary to such items and for customized competitive services developed for application solely in the context of the agreement.
- b. Inbound Competitive Multi-Service Agreements with Foreign Postal Operators may set forth general operating terms and conditions, on-time delivery and scanning service performance targets and standards, specifications for mail product categories and formats, processes for indemnity, and shared transportation arrangements that modify the requirements generally applicable to the services covered by each agreement.
- c. Items tendered under Inbound Competitive Multi-Service Agreements with Foreign Postal Operators items are either sealed or not sealed against inspection, according to the general nature of each underlying service.

2614.2 Size and Weight Limitations

Size and weight requirements are the requirements for Inbound Air Parcel Post at UPU Rates, Inbound Surface Parcel Post (at UPU Rates), Inbound Direct Entry, and Inbound International Expedited Services (Express Mail Service), respectively, subject to any applicable country-specific modifications.

2614.3 Optional Features

The Postal Service may offer such optional features as may be mutually agreed with the relevant foreign postal operator.

2614.4

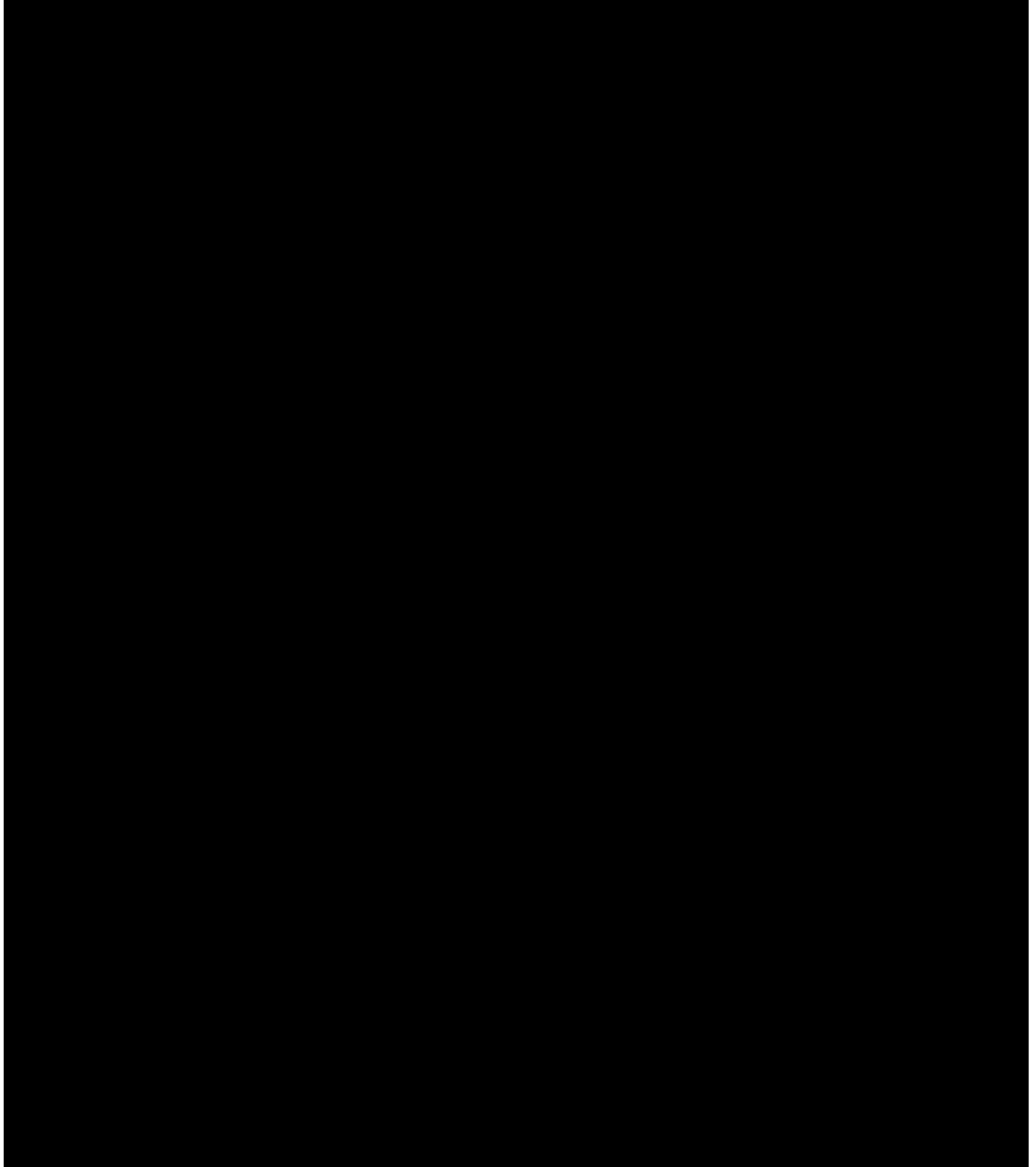
Products Included in Group (Agreements)

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-X, CP2010-X)

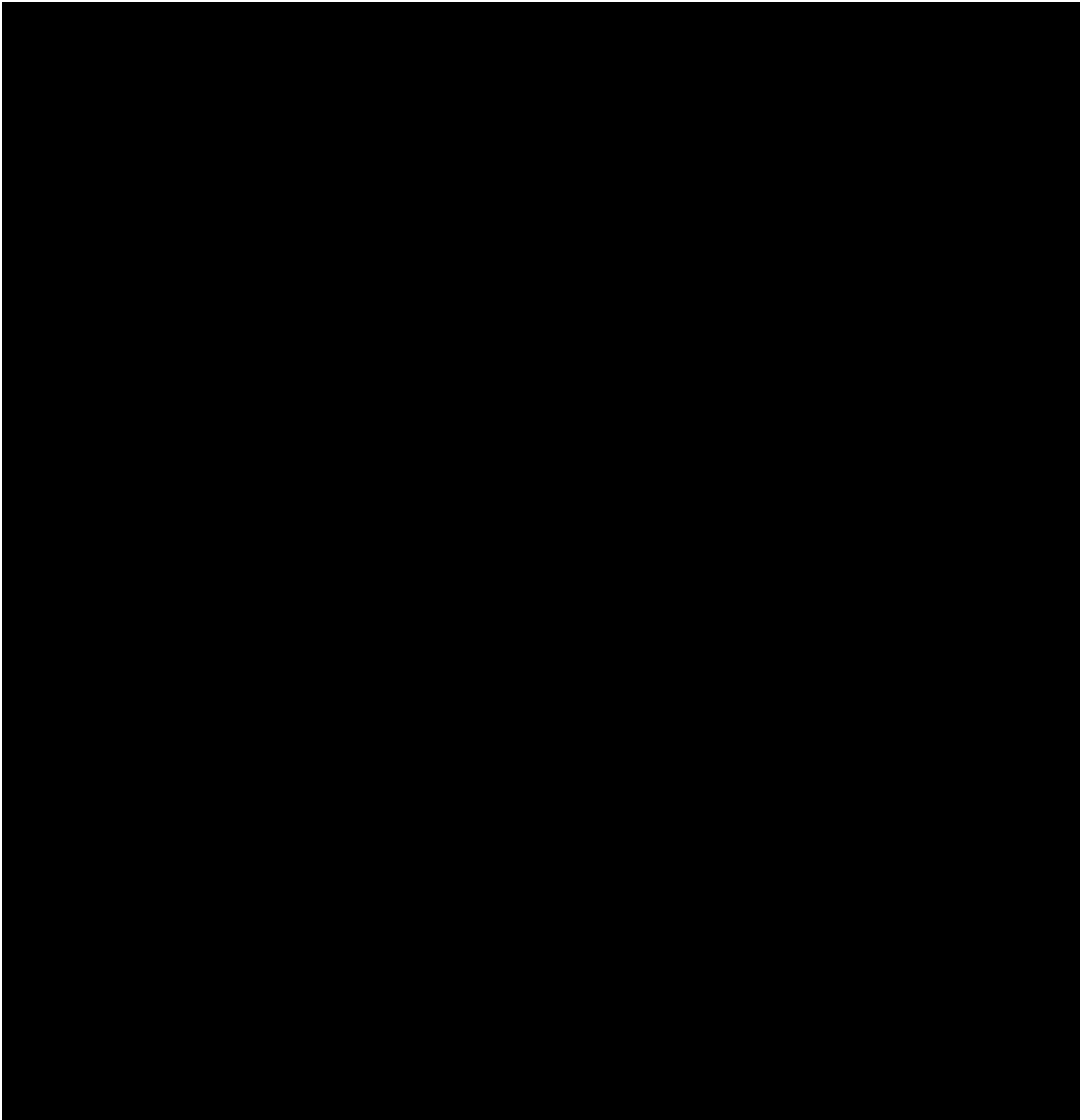
"Restricted and Sensitive Business Information - Do Not Disclose."

Attachment B

Formulas for Prices Under Applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators



"Restricted and Sensitive Business Information - Do Not Disclose."



Attachment C

Certification of Prices for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

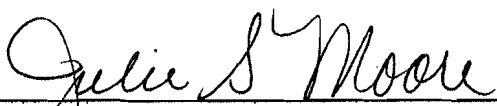
I, Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the price formulas for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, which are set forth in Attachment B. I hereby certify that these formulas adequately represent all necessary cost elements. If the Postal Service were to enter into agreements and offer services that set prices above the price floors, the Postal Service would be in compliance with 39 U.S.C. § 3633(a)(1), (2), and (3). The price floor formulas are designed to ensure that each agreement and service should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2009, all international competitive mail accounted for a relatively small percentage of the total contribution by all competitive products. Contribution from Inbound Competitive Multi-Service Agreements with Foreign Postal Operators should be much smaller. Even if all such agreements are signed with prices at the price floor, they should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.



Joseph Moeller

**CERTIFICATION OF GOVERNORS' VOTE
IN THE
GOVERNORS' DECISION NO. 10-3**

I hereby certify that the Governors voted on adopting Governors' Decision No. 10-3, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision.



Julie S. Moore
Secretary of the Board of Governors

Date: 8-9-2010

ATTACHMENT 4

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,¹ the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The China Post Group – United States Postal Service Multi-Product Bilateral Agreement (Agreement) and supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission. A redacted copy of the Agreement is filed with this notice as Attachment 1. In addition, a redacted version of the supporting financial documentation is included with this public filing as a separate Excel file.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The materials designated as non-public consist of information of a commercial nature that would not be publicly disclosed under good business practice. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).² Because the portions of the

¹ PRC Order No. 225, Final Rule Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

² In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury,

materials that the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In the case of the instant Agreement, the Postal Service believes that the only third party with a proprietary interest in the materials is the foreign postal operator with whom the Agreement is made. Through text in the Agreement, the Postal Service has already informed the postal operator, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and the operator's ability to address its confidentiality concerns directly with the Commission. Due to language and cultural differences as well as the sensitive nature of the Postal Service's rate relationship with the affected foreign postal operator, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operator. The Postal Service identifies as an appropriate contact person Mr. Shea Felix, Director, Global Business Solutions. Mr. Felix's phone number is (202) 268-6122, and his email address is shea.r.felix@usps.gov.³

such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

³ The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver to designate a Postal Service employee as the contact person under these circumstances, for the reasons provided in the text above.

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

In connection with its notice filed in this proceeding, the Postal Service included an Agreement, the enabling Governors' Decision, and financial workpapers. These materials were filed under seal, with redacted copies filed publicly, after notice to the affected foreign postal operator. The Postal Service maintains that the redacted portions of the Agreement, a certified statement required by 39 C.F.R. § 3015.5(c)(2), Governors' Decision, and related financial information should remain confidential.

The redactions to the Governors' Decision cover pricing formulas and management analysis about pricing factors. With regard to the Agreements filed in this docket, the redactions withhold the actual prices being offered between the parties under the Agreement, as well as certain negotiated terms. The redactions applied to the financial workpapers protect commercially sensitive information such as underlying costs and assumptions, negotiated pricing, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it has determined to be exempt from disclosure under 5 U.S.C. § 552(b).

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the portions of the Agreement that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. Information about negotiated pricing is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business

practices. Competitors could use the information to assess the offers made by the Postal Service to foreign postal operators or other customers for any possible comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. Additionally, foreign postal operators or other potential customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

The financial workpapers include specific information such as costs, assumptions used in pricing decisions, the negotiated prices themselves, projections of variables, and contingency rates included to account for market fluctuations and exchange risks. The redactions to the Governors' Decision cover pricing formulas and management's pricing analysis. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors would have the advantage of being able to determine the absolute floor for Postal Service pricing. Unlike its competitors, the Postal Service is required to demonstrate that each negotiated agreement covers its attributable costs. Furthermore, the Postal Service's Governors have required that the Agreement be submitted to the Commission with a notice that complies with 39 U.S.C. § 3632(b)(3).⁴ Thus, competitors would be able to take advantage of the information to offer lower pricing to postal customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze

⁴ Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (Governors' Decision No. 10-3), August 9, 2010, at 2.

the Postal Service out of the relevant inbound delivery services markets. Given that these spreadsheets are filed in their native format, the Postal Service's assessment is that the likelihood that the information would be used in this way is great.

Potential customers could also deduce from the rates provided in the Agreement or from the information in the workpapers and Governors' Decision whether additional margin for net profit exists between the Agreement being filed and the contribution that the Agreement must make. Moreover, charges between the Postal Service and the foreign postal operator constitute costs underlying the postal services offered to each postal operator's customers, and disclosure of this cost basis would upset the balance of Postal Service negotiations with contract customers by allowing them to negotiate, rightly or wrongly, on the basis of the Postal Service's perceived supplier costs. From this information, each foreign postal operator or customer could attempt to negotiate ever-decreasing prices, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised. Even the foreign postal operator involved in this Agreement could use the information in the work papers in an attempt to renegotiate its own rates by threatening to terminate its current agreement.

Price information in the Agreement and financial spreadsheets also consists of sensitive commercial information of a foreign postal operator. Disclosure of such information could be used by competitors of the postal operator to assess the operators' underlying costs, and thereby develop a benchmark for the development of a competitive alternative. The foreign postal operator would also be exposed to the same risks as the Postal Service in customer negotiations based on the revelation of its supplier costs.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Public disclosure of the price charts in the Agreement, as well as any negotiated terms, would provide foreign postal operators or other potential customers extraordinary negotiating power to extract lower rates from the Postal Service.

Hypothetical: The foreign postal operator's negotiated prices are disclosed publicly on the Postal Regulatory Commission's website. Another postal operator sees the price and determines that there may be some additional profit margin between the rates provided to the foreign postal operator and the statutory cost coverage that the Postal Service must produce in order for the Agreement to be added to the competitive products list. The other postal operator, which was offered rates identical to those published in the Agreement, then uses the publicly available rate information to insist that it must receive lower rates than those the Postal Service has offered it, or it will not use the Postal Service for its inbound delivery needs.

Harm: Competitors could use performance information to assess vulnerabilities and focus sales and marketing efforts to the Postal Service's and the foreign postal operator's detriment.

Hypothetical: The delivery standards information in the Agreement is released to the public. Another delivery service's employee monitors the filing of this information and passes the information along to its sales and marketing functions. The competitor then uses the Postal Service's and/or foreign postal operator's performance targets as a concrete comparison point, advertising itself to potential customers as offering performance better than the Postal Service's and/or the foreign postal operator's.

Harm: Public disclosure of information in the financial work papers and pricing information in the Governors' Decision would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service obtains a copy of the unredacted version of the financial work papers from the Postal Regulatory Commission's website. It analyzes the workpapers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers below that threshold and markets its purported ability to beat the Postal Service on price for international delivery services. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's competitors acting in a likewise fashion, would freeze the Postal Service out of one or more relevant international delivery markets. Even if the competing providers do not manage wholly to freeze out the Postal Service, they will significantly cut into the revenue streams upon which the Postal Service relies to finance provision of universal service.

Harm: Public disclosure of information in the financial workpapers would be used by the foreign postal operator's competitors to its detriment.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the financial workpapers from the Postal Regulatory Commission's website. The competitor analyzes the workpapers to assess the foreign postal operator's underlying costs for its corresponding products. The competitor uses that information as a baseline to negotiate with U.S. customs brokers and freight companies to develop lower-cost alternatives.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international expedited and parcels products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products (including other postal operators) should not be provided access to the non-public materials. This includes the counter-party of this Agreement with respect to all materials filed under seal except for the Agreement, to which that party already has access.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.